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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,349	09/12/2005	Atsushi Nagasawa	0230-0219PUS1	5681
2292 7590 01/29/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER BADR, HAMID R				
ART UNIT 1794		PAPER NUMBER		
NOTIFICATION DATE 01/29/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

### Office Action Summary

**Application No.**

10/520,349

**Applicant(s)**

NAGASAWA, ATSUSHI

**Examiner**

HAMID R. BADR

**Art Unit**

4174

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-25, 27, 29, 31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-25, 27, 29, 31 and 32 is/are allowed.
- 6) ☒ Claim(s) 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 01/04/2005, 09/19/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "sufficient fermentability" does not indicate what level of fermentation is considered sufficient (sufficient for what purpose?), as a result the claim is indefinite.

***Allowable Subject Matter***

3. The following reference is the state of the art: Nakagawa et al. (1994, Construction from a single parent of baker's yeast strains with high freeze tolerance and fermentative activity in both lean and sweet doughs).
4. Nakagawa et al. study the hybridization of spores of *Saccharomyces cerevisiae* (commercial baker's yeast) to construct a baker's yeast which is freeze-tolerant and has fermentative activity in both lean and sweet doughs (Abstract).
5. They teach determining the mating types to be used for their hybridization process (Page 3500, Col. 1, Determination of mating type).
6. They disclose the process of construction of hybrids. The isolated haploid strains showing opposite mating types are crossed by mixing in liquid medium. After the hybridization

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process, isolated strains are checked for their sporulation ability. Spore forming isolates are considered hybrids. (Page 3500, Col. 1, construction of hybrids)

7. They give details of dough ingredients for lean, regular and sweet doughs. A commercial hard wheat flour is used having 12% protein and 0.36% ash (Page 3500, Col. 1 ingredients of doughs and Table 1).

8. They teach the dough raising test by measuring the carbon dioxide evolved after 2 hours at 30°C. (Page 3500, Col.1 dough raising test)

9. They explain the frozen dough system where the prepared doughs are stored at (-20°C) for 1 week. After the freezing period, the thawed dough is placed in a bottle of Fermograph and the dough raising activity is measured for 2 hours. (Page 3500, Col. 1 Frozen dough system)

10. They indicate that it is possible to obtain strains with more improved qualities such as leavening ability and freeze tolerance than the commercial baker's yeast now available. (Page 3502, Col. 1, lines 13-17)

11. Nakagawa et al. are silent regarding isobutyric acid content of the yeast and the resulting offensive taste and odor characteristic of yeast.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-F 7:30-5:00 ET (First Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Lawrence Tarazano/  
Primary Examiner, Art Unit 4174

Hamid R Badr  
Examiner  
Art Unit 4174